***HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

**WRIT PETITION No.26709 of 2006**

**Dated:19.02.2007**

Between:

B.Bheemaiah.

…Petitioner.

and

The Divisional Co-operative Officer,Wanaparthy, Mahaboob Nagar District, and others.

…Respondents

***HON'BLE SRI JUSTICE L.NARASIMHA REDDY***

**WRIT PETITION No.26709 of 2006**

**ORDER:**

The petitioner is an Ex-President of P.A.C.S., Gattu, between 1987 and 1990. On the basis of allegations made against him, an enquiry under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"), was conducted and the enquiry officer reported certain irregularities against the petitioner. He has also recommended initiation of surcharge proceedings under Section 60 of the Act and criminal prosecution. A surcharge order under Section 60 of the Act was passed on 18.08.1993, directing recovery of a sum of Rs.2,75,016-16 ps. Thereafter, a complaint was filed under Section 409 of I.P.C. and it was tried as C.C.No.11 of 1996 by the Special Court for Co-operative Societies.

The petitioner was served with an order of attachment, dated 12.09.2006. He challenges the same on several grounds. He contends that he was not put on notice of any proceedings and that the impugned order cannot be sustained in law. It is also stated that C.C.No.11 of 1996 ended in acquittal, through judgment, dated 21.12.2000.

On behalf of respondents, a counter-affidavit is filed narrating the series of events that have taken place, ever since the petitioner was elected as President, up to his acquittal in the criminal case. It is stated that the surcharge proceedings under Section 60 of the Act became final and that the petitioner cannot object to its execution.

Sri V.L.Surendra, learned counsel for the petitioner, submits that his client was not issued any notice of hearing before any order under Section 60 of the Act was passed, nor a copy was communicated to him. He submits that the impugned order cannot be sustained in law.

Learned Government Pleader for Co-operation, on the other hand, submits that once the order under Section 60 of the Act has become final, the petitioner cannot object to its execution.

Though the petitioner had feigned ignorance about the various proceedings that have been initiated against him, particularly those under Section 60 of the Act, the record discloses that on the basis of the enquiry report submitted under Section 50 of the Act, as to the allegations against the petitioner, the proceedings were initiated under Section 60 of the Act. Ultimately, the surcharge order was passed on 18.08.1993. Such order, virtually entails in a decree, which can be executed in accordance with the Act. As long as the surcharge order remains, the petitioner cannot object to its execution.

Learned counsel for the petitioner had placed reliance upon a judgment of this Court in ***A.D.S.Sarma v. Deputy Registrar of Co-operative Society Amalapuram, East Godavari District***[1], in support of his contention that a surcharge order passed under Section 60 of the Act has no legs to stand, if the parallel prosecution launched against the concerned person has failed. That was a judgment, rendered in a writ petition, wherein the proceedings under Section 60 of the Act, were challenged. An occasion to examine the validity of an order under Section 60 of the Act would arise, if only it is challenged. For one reason or the other, the petitioner has not chosen to challenge the order passed against him under Section 60 of the Act. Therefore,

the precedent relied upon by the petitioner cannot be applied to the facts of this case.

For the foregoing reasons, the writ petition is dismissed. It is, however, made clear that it shall be open to the petitioner to challenge the order, dated 18.08.1993, passed under Section 60 of the Act against him, if it is permissible in law. There shall be no order as to costs.

**Dt.19.02.2007** **L.NARASIMHA REDDY, J**

GJ

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[1] 2002 (5) ALD 520